IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13-06-2006

CORAM

THE HONOURABLE MR. JUSTICE ELIPE DHARMA RAO
AND
THE HONOURABLE JUSTICE MS.K.SUGANA

W.P.No.13484 of 2000

Smt.Mariammal .. Petitioner

Versus

1. The Registrar,
Central Administrative Tribunal
Chennai - 600 104.

2. Union of India represented by
The Senior Divisional Personnel Officer
Madras Division, Southern Railway
Chennai - 600 003 .. Respondents

Petition under Article 226 of The Constitution of India to issue a Writ of ceriorari and for the reliefs as stated therein.

For Petitioner : Mr.N.Chandra Raj

For Respondents : Mr.Sekhar

ORDER

(Order of the Court was made by ELIPE DHARMA RAO,J)

The petitioner has filed this writ petition praying for a writ of certiorarified mandamus calling for the records of the first respondent pertaining to the order dated 30-06-1999 made in O.A.No.737 of 1997 as confirmed in R.A.No.44 of 1999 dated 05-04-2000 dismissing the original application for the grant of family pension to the petitioner w.e.f.29-08-1986 and setaside the same and allow the Original Application and direct the 2nd respondent to sanction and pay family pension to the petitioner w.e.f. 29-08-1986.

2. The petitioner is the wife of Late Shanmugham, who died on 28-08-1986 and who was initially appointed as a Casual Labour with the second respondent. By order dated 06-09-1974, the respondents have granted a temporary status to the deceased Shanmugham and

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unfortunately, his service was not regularised till his death. Thereafter, the petitioner has filed an application for grant of family pension. It was rejected by the second respondent on the sole ground that the deceased husband of the petitioner was only a temporary casual labour and hence, she is not entitled to the family pension. Aggrieved by this order, the petitioner approached the first respondent by filing O.A.NO.737 of 1997. The first respondent dismissed the application with an observation that the matter requires special consideration and left it open to the second respondent to give due consideration to the case on hand, placing reliance upon the law laid down by the Supreme Court in SLP (Civil)Nos.3341/93 and 10951/95(UOI AND OTHERS VS. SUKANTI AND ANOTHER ETC.) and the judgments rendered in RAM KUMAR AND OTHERS V. UOI AND OTHERS (1988 (2) SCR 139). Against this, the present writ petition is filed.

3. The learned counsel for the petitioner would submit that when once the second respondent has granted the temporary status in the year 1974 and paid the scale of pay attached to the post, mere denial of the grant of pension to the petitioner on the ground that his service was not regularised is contradict to the scheme of the Constitution of India. It is further contended that since the husband of the petitioner was in regular railway service from 06-09-1974, the respondents erred in not granting the petitioner the pension under Rule18(3) of the Railway Pension Rules 1993.

4. The learned counsel for the petitioner reiterated the grounds mentioned above relying upon the following judgments:

(1) RUKHIBEN RUPABHAI V. UNION OF INDIA AND ORS.
(2006 (2) ATJ 1)
and

(2) ELURI MARTHAMMA V. DIVISIONAL RAILWAY MANAGER
(2000 (3) ATJ 238),

The Division Benches have considered the question of payment of family pension to the casual labour under the Railway Servants (Discipline and Appeal) Rules,1968 and Rule 801 of the Railway Pension Rules and in 2006 (2) ATJ 1 (cited supra) the Division Bench held as follows,

> "... he is a "temporary railway servant". .... Having acquired this status, he is entitled to pension and other consequential benefits on superannuation, and on his demise in harness or after superannuation his widow becomes entitled to family pension."

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It was further held,

> "... however, non-regularisation/confirmation against permanent posts on account of non-availability of posts or on account of any laxity in this regard on the part of the employer cannot be a ground to deny pensionary rights."

5. The learned counsel for the respondents have filed their counter and would have no explanation for the non-regularisation of the service of the deceased-husband of the petitioner, though temporary status was granted in the year 1974 itself.

6. Considering the facts and circumstances of the case on hand, it is clear that the respondents have not taken any appropriate action for regularisation/confirmation of the petitioner's husband for a period of twelve years from the date of appointment of the petitioner's husband till his death in the year 1986. In this regard, the judgment rendered by the Division Bench of the Gujarat High Court in 2006 (2) ATJ 1(cited supra) can be taken note of wherein it was held,

> "Regularisation against a permanent post, may be there, but pensionary right do not depend on regularisation/confirmation, of course, whether such posts are available or not, employee should be deemed to have become permanent, since laxity in this regard on the part of the employer should not militate against the right of the employee."

7. Rules 2315, 2318 and 2311(3)(b) of the Railway Establishment Manual and Paragraph 801 of the Manual of Railway Pension Rules came up for consideration before the Apex Court in PRABHAVATI DEVI V. UNION OF INDIA AND OTHERS (1996 (32) ADMINISTRATIVE TRIBUNALS CASES 515). In the said case, the deceased was a temporary Railway servant who was initially taken in the Railway establishment as a casual worker and with effect from 27.4.1983, he acquired the status of a substitute and worked as a substitute till 5.1.1987 when he died. But before his demise, he came to acquire certain rights and privileges under Rule 2318 of the Rules applicable to the Railway Establishments, which provides that substitutes shall be afforded all the rights and privileges as may be admissible to temporary Railway servants, from time to time, on completion of six months' continuous services. Indubitably, the deceased had worked beyond six months and that too continuously. Having become a temporary servant in this manner, he became entitled to family pension under Rule 2311(3)(b), whereunder it s provided that the widow/minor children of a temporary Railway servant who dies while in service after a service of not less than

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one year continuous (qualifying) service shall be eligible for a family pension under the provisions of paragraph 801 of the Manual of Railway Pension Rules. The Railways have paid to the widow of the deceased/appellant gratuity under this sub-rule, but denied to her the family pension. Her claim before the Central Administrative Tribunal was dismissed. On appeal, the Supreme Court, relying on the decisions in L. ROBERT D'SOUZA vs. EXECUTIVE ENGINEER, SOUTHERN RAILWAY (1982 (1) SCC 645) and UNION OF INDIA V. BASANT LAL (1992 (2) SCC 679), set aside the order of the Tribunal and allowed the claim of the appellant for family pension. The above decision of the Supreme Court squarely covers the facts of the present case.

8. Following the decision of the Supreme Court cited supra, we set aside the impugned order of the Tribunal and allow the claim of the petitioner for family pension as projected by her. The writ petition stands allowed. We further direct the Railways to work out the family pension payable to the petitioner within two months from today and deliver the pension, as also the arrears of pension to the petitioner within fifteen days thereafter, if not earlier, and also pay interest at the rate of 12% per annum from the date it was due till payment. In the circumstances, there will be no order as to costs.

glp

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Registrar,
Central Administrative Tribunal
Chennai.

2.The Senior Divisional Personnel
Officer, Madras Division
Southern Railway, Chennai-3.

+ one cc to Mr.M.Sekar, Advocate Sr.No.24272.
+ one cc to Mr.N.Chandra Raj, Advocate Sr.No.24197.

AMB (CO)
RSM/20.6.2006

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